

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JEREMY BALES CREATIVE LLC

Plaintiff,

-against-

BC HOSPITALITY GROUP LLC

Defendant.

ECF Case

Civil Action No. \_\_ Civ. \_\_\_\_\_

**COMPLAINT – Jury Trial Demanded**

Plaintiff, Jeremy Bales Creative LLC, by its undersigned counsel, Mavronicolas Law Group PLLC, for its complaint against defendant, BC Hospitality Group LLC (“Defendant”) alleges as follows:

**JURISDICTION AND VENUE**

1. This claim arises under the provisions of the Copyright Act of the United States, as amended, 17 U.S.C. § 1 *et seq.*, and is for infringement of a copyright application before the Copyright Office of the United States.
2. This Court has subject matter jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 1338(a).
3. This Court has personal jurisdiction over the Defendant pursuant to N.Y. CPLR § 301 and 302 because, on information and belief, Defendant is registered to do business in the State of New York and because substantial parts of the events or omissions giving rise to the claims herein occurred within this District.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) and 28 U.S.C. §1400 in that the Defendant may be found in the district and, upon information

and belief, has committed acts of infringement in the district.

### **PARTIES**

5. Plaintiff is a well-known photographer residing in Queens, N.Y. Plaintiff is a professional photographer and in the business of licensing rights in his images to users for a fee.
6. Upon information and belief, Defendant is a New York limited liability company, with a registered agent listed at 950 Third Avenue, 22<sup>nd</sup> Floor, New York NY 10022.
7. Upon information and belief, Defendant is a company that owns and operates various restaurants around the world including 9 restaurants in New York City.
8. Defendant maintains a website for these purposes located at [www.eatbychloe.com](http://www.eatbychloe.com)

### **RELEVANT FACTS**

9. Plaintiff is the owner of the copyrights identified in Exhibit A hereto (the "Image"). Plaintiff is the owner of valid copyright registration to the Image; such registration number and image infringement details are listed in Exhibit A.
10. Plaintiff has a copyright registration with an effective date of registration of October 28, 2015. A copy of the registration certificates is attached hereto as Exhibit B.
11. On September 13, 2015, Plaintiff published the Image on the website located at the URL <http://www.nydailynews.com/life-style/eats/new-york-chefs-whipping-homemade-treats-dogs-article-1.2355936>.
12. Upon information and belief, Defendant infringed Plaintiff's copyright in the

Image by reproducing and publicly displaying the Image on a job search website and on Defendant's website for advertising purposes without obtaining or paying for the necessary license.

13. Defendant was displaying the Image on its website at <https://eatbychloe.com/?s=dog>. A copy of the infringing use is annexed hereto as Exhibit C.

14. Defendant also posted the Image on a job posting website, [Harri.com/By-Chloe.-Commissary/job/556386-driver..](https://harri.com/By-Chloe.-Commissary/job/556386-driver..). A copy of the second infringing use is annexed hereto as Exhibit D.

15. Plaintiff contacted Harri (US) LLC on or about December 4, 2019 and was told that Defendant was the entity that posted the image along with the job posting and that Defendant removed said image from its website immediately.

16. Defendant was not, and has never been, licensed or otherwise authorized to reproduce, display, distribute or use the Image.

17. Upon information and belief, Defendant's website is located on the Internet and accessible throughout the world, including the State of New York.

18. Prior to instituting the present action, Plaintiff notified Defendant that the unauthorized use of the Image violate Plaintiffs exclusive rights as copyright owner pursuant to 17 U.S.C § 106, and gave Defendant an opportunity to enter into a retroactive licensing agreement or otherwise make payment for Defendant's past unauthorized use.

19. Despite Plaintiffs repeated requests for payment, Defendant refused to properly rectify its infringing conduct.

**FIRST CAUSE OF ACTION – COPYRIGHT INFRINGEMENT**

20. Plaintiff incorporates paragraphs 1-19 above, as though fully set forth herein.
21. Plaintiff holds valid and exclusive registered copyright to the image that are the subject of this action and that are evidenced by the copyright registration certificates referenced by Exhibit A.
22. Defendant reproduced, distributed and displayed the image without Plaintiffs authorization.
23. Unauthorized use of the Image violates Plaintiffs exclusive rights as copyright owner pursuant to 17 U.S.C § 106.
24. Defendant conduct constitutes copyright infringement under the Copyright Act of 1976, 17 U.S.C §501.
25. As a result of the copyright infringement described above, Plaintiff is entitled to relief, including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorneys fees and pre-judgment and post-judgment interest for each of the works infringed by Defendant.

**SECOND CAUSE OF ACTION- VIOLATION OF 17 U.S.C. 1202(b)**

26. Plaintiff incorporates paragraphs 1-25 above, as though fully set forth herein.
27. The image that is the subject to this lawsuit was displayed on the <http://www.nydailynews.com/life-style/eats/new-york-chefs-whipping-homemade-treats-dogs-article-1.2355936> website with corresponding copyright

- management information, including the name of the Plaintiff below the photo.
28. The Image that appeared on their website <https://eatbychloe.com> did not include Plaintiff's copyright management information.
29. Upon information and belief, Defendant intentionally removed or omitted the copyright management information when it reproduced the Image.
30. Such action, as described above, constitutes a violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1202(b).
31. As a result of the conduct described above, plaintiff is entitled to relief including, but not limited to, injunction relief, actual or statutory damages, statutory costs and attorneys' fees, and prejudgment interest.

**WHEREFORE**, Plaintiff prays that this Court it relief as follows;

- A. Preliminarily and permanently enjoin Defendant, its officers, directors, principals, agents, servants, employees, successors and assigns from:
- i. copying, or making any unauthorized use of the Image in any form, including but not limited to print or electronic.
  - ii. manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any promotional material bearing any simulation, reproduction, counterfeit, or copy of the Image.
  - iii. using any simulation, reproduction, counterfeit, or copy of the Image, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any product or service of Defendant.

- B. Direct Defendant to deliver for destruction all products, magazines, signs, prints, packages, wrappers, receptacles, digital files and advertisements in its possession or under their control, bearing the Image, or any simulation, reproduction, counterfeit, or copy, and all plates, molds, matrices and other means of making the same.
- C. Direct Defendant to account for and relinquish to Plaintiff all gains, profits, and advantages derived by Defendant through Defendant infringement of Plaintiff's copyrights.
- D. Direct Defendant to pay to Plaintiff actual damages or, its statutory damages as set forth in 17 U.S.C. 504 if Plaintiff so elects at any time before final judgement is rendered.
- E. Award Plaintiff the costs of this action together with reasonable attorney's fees in accordance with 17 U.S.C. §505;
- F. Award Plaintiff pre-judgment and post-judgment interest on the amount of the award Plaintiff, and;
- G. Award Plaintiff such other and further relief as the Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiff Jeremy Bales Creative, LLC hereby demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38 and other applicable law.

Dated: New York, NY  
February 16, 2020

Respectfully Submitted,

/s/Nicholas Ranallo  
**MAVRONICOLAS LAW GROUP PLLC**

Nicholas Ranallo (Of Counsel)  
Gregori D. Mavronicolas  
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Telephone: 646.770.0024  
Facsimile: 866.774.9005

**Exhibit A**

**WORK AND INFRINGING USE**

**Copyrighted Works.**

| <b>No.</b> | <b>TITLE</b>        | <b>COPYRIGHT<br/>REGISTRATION</b> |
|------------|---------------------|-----------------------------------|
| <b>2.</b>  | Bales_20150904_1701 | VA 1-994-598                      |

**Infringing Uses.**

- 1. Work Infringed:** Bales\_20150904\_1701  
**Number of Known Infringing Uses:** 2  
**Page URL(s):** <https://eatbychloe.com/?s=dog> & [Harri.com/By-Chloe.-Commissary/job/556386-driver](https://harri.com/By-Chloe.-Commissary/job/556386-driver)  
**Image URL(s):** <https://eatbychloe.com/?s=dog> & [Harri.com/By-Chloe.-Commissary/job/556386-driver](https://harri.com/By-Chloe.-Commissary/job/556386-driver)

**Exhibit B**

**COPY OF COPYRIGHT REGISTRATION CERTIFICATE**

**Certificate of Registration**



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

United States Register of Copyrights and Director

**Registration Number**

**VA 1-994-598**

**Effective Date of Registration:**

October 28, 2015

**Title**

**Title of Work:** Bales\_20150904\_1701

**Completion/Publication**

**Year of Completion:** 2015  
**Date of 1st Publication:** September 13, 2015  
**Nation of 1<sup>st</sup> Publication:** United States

**Author**

• **Author:** Jeremy Bales Creative, LLC  
**Author Created:** photograph  
**Work made for hire:** Yes  
**Citizen of:** United States

**Copyright Claimant**

**Copyright Claimant:** Jeremy Bales Creative, LLC  
PO Box 20078, Greeley Square Station, New York, NY, 10001

**Rights and Permissions**

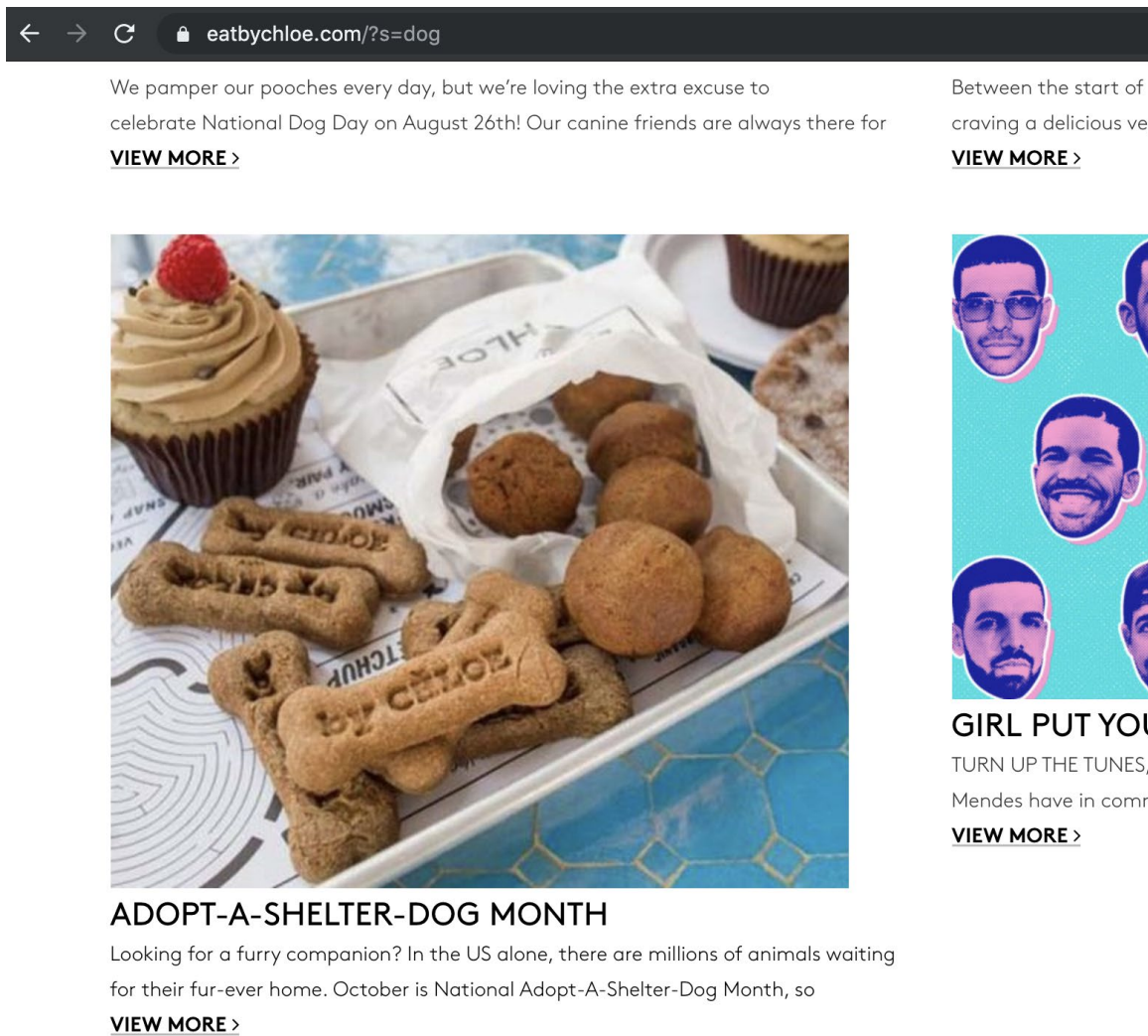
**Organization Name:** Jeremy Bales Creative, LLC  
**Email:** pictures@jeremybales.com  
**Address:** PO Box 20078  
Greeley Square Station  
New York, NY 10001 United States

**Certification**

**Name:** Jeremy Bales  
**Date:** October 28, 2015

## Exhibit C

**A COPY OF THE EATBYCHOLIE.COM WEBSITE SHOWING IMAGE**



**Exhibit D**

**A COPY OF THE HARARI.COM WEBSITE SHOWING IMAGE**

HARRI (US) LLC [US] | harri.com/By-Chloe.-Commissary/job/556286-driver

by CHLOE. commissary

Neighborhood Casual · Vegan

SHARE

See more about by CHLOE. commissary

Driver

Responsibilities

Deliver a wide variety of items to different addresses and through different routes

Follow routes and time schedule

Load, unload, prepare, inspect and operate a delivery vehicle

Complete logs and reports

Follow regulations and safety standards

Other Duties ... [+ more](#)

DETAILS

Salary

\$13 - \$15 / Hour

Schedule

Full Time

Location

150 Pacific Ave, Jersey City, NJ 07304, USA

Expiry date

Wed, 03 May 2017

Category

Neighborhood Casual

Cuisine

Vegan

REQUIRED SKILLS

● Able to lift 30+ pounds

By applying you confirm you have these skills.

❌ EXPIRED JOB POST